

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEPHANIE M OMAN
Claimant

APPEAL NO. 07A-UI-05622-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

**OC: 05-06-07 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 23, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 21, 2007. The claimant did participate. The employer did participate through Candace Daniels, Supervisor of Human Resources, Jenifer Kiewiet, Supervisor of Student Loan Counseling Service and (representative) Mike Paquette, Senior Director of Operations.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a counselor full time beginning July 10, 2006 through May 10, 2007, when she was discharged.

The claimant was discharged for sleeping on the job on May 10, 2007. The claimant arrived at work on May 10 at approximately 7:00 a.m., her regular starting time. When her supervisor approached her at 7:32 a.m. she noted that the claimant was sitting in her chair with her feet pulled up on the chair, her knees to her chest. Her eyes were closed and her head was leaning back. After Ms. Kiewiet saw the claimant in that position, she approached Mike Paquette and had him observe the claimant. Mr. Paquette walked down the hall toward the claimant's desk and observed that she was sitting in her chair with her feet pulled up on her chair, her knees to her chest, her eyes were closed and her head was back with her mouth open. Mr. Paquette grabbed the back of the claimant's chair and asked her to wake up. The claimant startled and appeared disoriented.

The week prior to this event, the claimant had been specifically told by Ms. Kiewiet not to sit with her feet on her chair and that she was not to have her eyes closed while at her desk. The claimant was warned that sleeping on the job was not appropriate. When the claimant was awakened by Mr. Paquette she did not tell him that she had her eyes closed due to any injury.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Sleeping on the job on two occasions, one year apart can constitute job misconduct. *Hurtado v. IDJS*, 393 N.W.2d 309 (Iowa 1986). The claimant was seen sleeping by both Mr. Paquette and Ms. Kiewiet on May 10. The administrative law judge is persuaded that the claimant was not resting her eyes but was in fact sleeping on the job. She had been instructed the week prior to this incident not to sit with her feet on her chair and to keep her eyes open. The claimant knew that sleeping on the job was not allowed and she had been instructed not to do so. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's sleeping on the job is sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The May 23, 2007, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount,

provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css